



Department of Business Regulation

233 Richmond Street

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Insurance Regulation 73 - Unfair Property/Casualty Claims Settlement Practices

The purpose of this bulletin is to further explain the requirements of Section (7)(A)(2) of *Insurance Regulation 73 – Unfair Property/Casualty Claims Settlement Practices* regarding the guide to be utilized by insurers in determining the cash value of a total loss motor vehicle.

Section 7(A)(2) entitled Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurer, Total Losses states as follows:

(2) Cash Settlement

(i) The Insurer may elect to pay a cash settlement equal to the actual cash value of the motor vehicle less any deductible provided in the Policy. In determining the actual cash value of a motor vehicle to settle motor vehicle property damage liability and collision damage claims, Insurers shall use as a guide, the average retail values indicated by the National Automobile Dealers Association official Used Car Guide ("Guide") or some service substantially similar (with appropriate adjustment for such factors as vehicle condition, high and low mileage, accessory options). Nothing herein shall preclude a deviation from the Guide in cases where it can be shown that the vehicle in question was of substantially greater or lesser value in a particular geographical location than the average retail values that the Guide indicates. When the cash settlement amount is affected by betterment or depreciation, the Insurer must support the deviation by documentation in the Claim File by giving particulars of the automobile condition that warrant said deviation. Any deductions or betterment from actual cash value from the Guide, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount. The basis for determining actual cash value shall be fully explained to the Claimant. All information that is the basis for such reduction shall be contained in the Claim File.

The purpose of Section 7(A)(2) is to ensure that claims are settled equitably and fairly. Under Section 7(A)(2), insurers are directed to base a cash settlement on the “actual cash value” of the total loss vehicle and in making such a determination insurers must use the National Automobile Dealers Association official Used Car Guide (“Guide”) or a substantially similar service.

The average retail values contained in the Guide are considered to be a guide to arriving at an actual cash value. However, Section 7(A)(2) does not require an insurer to use a specific valuation service but rather provides guidance on how to arrive at an actual cash value in order to settle a claim fairly and equitably. On a case by case basis, an insurer must document the actual cash value and be able to show how a fair and equitable settlement was determined.

While Section 7(A)(2) does not require the use of a particular valuation service, the insurer may not alternate among different services on a case by case basis to arrive at the lowest value. Rather, insurers must use one (1) service on a uniform, consistent, and regular basis. On occasion, insurers may have to use an alternative valuation service if their usual service does not value a particular vehicle. In that situation, the insurer must provide documentation in the claim file indicating why it was necessary to use the alternative service.

In determining whether an insurer has paid the actual cash value of a vehicle, the Department will review the totality of circumstances, including but not limited to, the documentation provided by the insurer showing how the insurer arrived at the settlement amount.

In determining whether a total loss valuation service is substantially similar to the Guide, the Department will consider certain factors which will include, but will not be limited to, the following:

1. The geographic area in which the comparison vehicles were located.
2. How recent the values were for the comparison vehicles.
3. How similar the comparison vehicles were to the total loss vehicle, e.g. year, make, body style, number of doors, mileage, options etc.
4. Whether the number of vehicles that the total loss vehicle was compared to is sufficient and reasonable under the circumstances to make a meaningful comparison.
5. Whether the comparison vehicle values were obtained from dealer or private sales. Significant weight should be given to dealer prices. Downward adjustments in value should not be made to dealer prices without the justification for any such adjustment being measurable, discernable, itemized and specified as to dollar amount.

In addition, vehicles with unlisted mileage may not be used as a comparison vehicle in determining the actual cash value.

In the event of a dispute between a claimant and an insurer with respect to the actual cash value of a total loss motor vehicle, the Department will presume that the actual cash value is the average dollar amount of 1) the average retail value indicated in the Guide and 2) the value indicated in the service used by the insurer with the appropriate and required adjustments provided the value of the service used complies with the above five (5) criteria. It will be the insurer's burden to rebut that presumption.

An insurance company's failure to comply with the above may lead to a finding of violations of R.I. Gen. Laws § 27-9.1-1 *et seq.* and Section (7)(A)(2) of Regulation 73.

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